

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY L. WILLIAMS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
LABOR,

Defendant.

No. C 11-6653 CW

ORDER GRANTING  
DEFENDANT'S MOTION  
TO DISMISS (Docket  
No. 8)

Defendant United States Department of Labor has filed a motion to dismiss for lack of subject matter jurisdiction. Plaintiff Anthony L. Williams has not filed an opposition to Defendant's motion. The Court takes Defendant's motion under submission on the papers and GRANTS the motion.

BACKGROUND

In September 2004, Plaintiff brought suit against United Airlines, alleging retaliatory termination, pursuant to the Whistleblower Protection Program (WPP) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121. This Court granted summary judgment in favor of United Airlines on Plaintiff's AIR 21 claim. On appeal, the Ninth Circuit found that this Court lacked subject matter jurisdiction under the WPP, because the statute creates no private right of action in federal district court. Williams v. United Airlines, Inc., 500 F.3d 1019, 1021-25 (9th Cir. 2007).

In 2008, Plaintiff filed a complaint under the WPP against United Airlines with the United States Department of Labor. A

1 Department of Labor Administrative Law Judge (ALJ) recommended  
2 dismissal of his complaint because he filed his claim more than  
3 ninety days after the filing deadline for such claims. On  
4 September 21, 2009, the Administrative Review Board (ARB) affirmed  
5 the ALJ. Williams v. United Airlines, ARB No. 08-063, ALJ No.  
6 2008-AIR-003 (ARB Sept. 21, 2009). The ARB also denied his  
7 subsequent motion for reconsideration. Williams v. United  
8 Airlines, ARB No. 08-063, ALJ No. 2008-AIR-003 (ARB June 23,  
9 2010).

10 Plaintiff appealed the ARB decision to the Federal Circuit,  
11 which found that it did not have jurisdiction to review the  
12 decision and transferred the case to the Ninth Circuit. Williams  
13 v. U.S. Dept. of Labor, 370 Fed. Appx. 97, 97-98 (Fed. Cir. 2010).

14 In August 2011, the Ninth Circuit determined that it had  
15 jurisdiction under the WPP, found that the ARB had properly denied  
16 Plaintiff's complaint as untimely and concluded that equitable  
17 tolling did not apply. Williams v. U.S. Dept. of Labor, 2011 U.S.  
18 App. LEXIS 17300, at \*1-2 (9th Cir.).

19 Plaintiff now returns to this Court in an attempt to set  
20 aside the judgments against him in the prior proceedings both  
21 before this Court and the ARB.

#### 22 DISCUSSION

23 Dismissal is appropriate under Rule 12(b)(1) when the  
24 district court lacks subject matter jurisdiction over the claim.  
25 Fed. R. Civ. P. 12(b)(1).

26 The Ninth Circuit has already determined that this Court  
27 lacked subject matter jurisdiction to consider Plaintiff's WPP  
28 claim. In doing so, the court did not simply determine that

1 "Williams must first file an administrative complaint before  
2 filing a claim in federal district court," but also questioned  
3 "whether Williams could have brought this action at all in federal  
4 district court," and concluded that he could not, "even after  
5 filing a complaint with the Secretary of Labor." Williams v.  
6 United Airlines, Inc., 500 F.3d at 1022. This Court is bound to  
7 follow the Ninth Circuit's prior decision.

8 This Court also does not have jurisdiction to review the  
9 ARB's decision. Such jurisdiction is vested in the Court of  
10 Appeals under 49 U.S.C. § 42121(b)(4)(A). See Williams v. U.S.  
11 Dept. of Labor, 2011 U.S. App. LEXIS 17300, at \*1. Further, this  
12 Court clearly cannot review or reverse the Ninth Circuit's prior  
13 holding that the ARB properly denied Plaintiff's complaint as  
14 untimely.

15 CONCLUSION

16 For the reasons set forth above, Defendant's motion to  
17 dismiss for lack of subject matter jurisdiction is GRANTED (Docket  
18 No. 8). Dismissal is without leave to amend, because no  
19 additional allegations could cure the deficiencies identified  
20 above.

21 The Clerk shall enter judgment and close the file. Defendant  
22 shall recover its costs from Plaintiff.

23 IT IS SO ORDERED.

24  
25 Dated: 5/1/2012

26   
27 CLAUDIA WILKEN  
28 United States District Judge